

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TODD LEE LEANY, Trustee of the TODD
LEE LEANY IRREVOCABLE TRUST,

Plaintiff,

v.

SAN DIEGO STEEL HOLDINGS GROUP,
INC., a California corporation; DAVID
PERKINS, Individually; ERIC B. BENSON,
Individually; and DOES I through X,
inclusive; and ROE CORPORATIONS
I through X, inclusive,,

Defendants.

Case No. 2:15-cv-01349-MMD-CWH

ORDER

(Motion for Summary Judgment– ECF No.
36;
Motion to Amend Answer to Complaint –
ECF No. 38)

I. SUMMARY

Before the Court is a Motion for Summary Judgement (“Defendants’ Motion”) filed by Defendants San Diego Steel Holdings Group, Inc. (“SDSHG”), David Perkins and Eric Benson (collectively “Defendants”). (ECF No. 36.) Also before the Court is SDSHG’s Motion to Amend to Add Counterclaims and Third Party Claims (“Motion to Amend”). (ECF No. 38.) For the reasons discussed below, Defendants’ Motion is denied without prejudice and the Motion to Amend is denied as moot.

II. BACKGROUND

Plaintiff Todd Lee Leany filed suit in state court, asserting claims for breach of contract, breach of implied covenant of good faith and fair dealing, unjust enrichment, intentional interference with contractual relations, and declaratory relief. (ECF No. 1 at

1 13-16.) Defendants removed based on diversity jurisdiction pursuant to 28 U.S.C. §
2 1332. (ECF No. 11.)

3 Defendants Perkins and Benson filed separate motions to dismiss (ECF Nos. 14,
4 27) based on Nevada's real estate broker licensing regulations. The Court granted
5 Perkins and Benson's motions, dismissed the claims against them, and gave Leany
6 leave to amend his complaint. (ECF No. 41 - Dismissal Order.) The Court also instructed
7 the parties to meet and confer and file a joint status report addressing the pending
8 motions—Defendants' Motion and Motion to Amend—which at the time were not fully
9 briefed. (*Id.* at 6-7.)

10 After the Court issued the Dismissal Order, Defendants filed a reply brief in
11 support of their Motion. Defendants ask the Court to grant summary judgement on
12 Leany's claims against SDSHG for the same reasons it dismissed his claims against
13 Perkin and Benson and acknowledges that the rest of Defendant's Motion was mooted
14 by the Dismissal Order. (ECF No. 43.)

15 The parties then filed a joint status report indicating the following: "Plaintiff does
16 not concede this [Motion for Summary Judgement]. This Motion is fully briefed, and the
17 parties recognize that Plaintiff's anticipated amended complaint may impact and/or delay
18 the Court's resolution of this motion." (ECF No. 45.)

19 Leany eventually filed an amended complaint, which asserts claims against
20 SDSHG, Perkins, Benson, and various unnamed individuals and corporate defendants.
21 (ECF No. 47.) Defendants, appropriately, filed an answer to the amended complaint and
22 included counterclaims and third party claims. (ECF No. 51.)

23 **III. DISCUSSION**

24 Leany's amended complaint appears to be similar to his original complaint, with
25 some additional allegations and three additional claims for relief. (*Compare* ECF No. 1
26 *with* ECF No. 47.) While it is likely that his claims against SDSHG are barred for the
27 same reason his original claims against Perkins and Benson were barred, the Court
28 finds that the most prudent method for resolving the Defendants' Motion would be to

1 deny it without prejudice and allow Defendants to refile in response to the amended
2 complaint. This will give Leany the opportunity to argue, if he so chooses, why he
3 believes the additional allegations in his amended complaint should lead this Court to a
4 different conclusion.

5 Additionally, SDSHG's Motion to Amend (ECF No. 38) is mooted by Leany's filing
6 of an amended complaint and Defendants' subsequent answer and counterclaims.

7 **IV. CONCLUSION**

8 It is hereby ordered that Defendants' Motion to for Summary Judgment (ECF No.
9 36) is denied without prejudice. It is further ordered that SDSHG's Motion to Amend
10 (ECF No. 38) is denied as moot.

11 DATED THIS 29th day of August 2016.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written above a horizontal line.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE